

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 132 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HARSHADRAI SOMNATH JOSHI

Versus

M/S.GUNVANTRAI RAGHAVJI

Appearance:

MR SURESH M SHAH for appellant.
MR DA SURANI for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. Upon the joint request made by the learned advocates for the parties, the matter is taken up for necessary orders though it was adjourned to September 29, 2000 by treating it as a part-heard matter.

2. Mr. D.A. Surani, learned advocate for the respondent, upon instructions from his client who is present in Court, makes a statement that both the parties have arrived at a settlement outside the Court and as the parties have settled the matter outside the Court, he seeks permission to withdraw the suit being Civil Suit No. 174 of 1980 filed in the Court of Civil Judge (S.D.)., Surendranagar.

3. The suit in question was filed by the respondent for the relief of specific performance of oral agreement which was granted by the trial court vide judgment and decree dated April 30, 1984. The appellant herein has preferred appeal being Regular Civil Appeal No. 93 of 1984 before the District Court, Surendranagar. The learned Assistant Judge, Surendranagar dismissed the appeal by confirming the judgment and decree recorded by the trial court, vide judgment and decree dated July 30, 1990. Aggrieved thereby the present appeal has been filed by the original defendant.

4. Since Mr. Surani, learned advocate for the respondent seeks permission to withdraw the original civil suit obviously the decree recorded by the trial court and confirmed by the lower appellate court is required to be quashed and set aside.

5. Mr. Suresh M. Shah, learned advocate for the appellant, states that in view of the development between the parties and since the original plaintiff is seeking premission to withdraw the suit, obviously the decree recorded by the trial court and confirmed by the lower appellate court now would not assume any survival value and, therefore, he seeks permission to withdraw the Second Appeal filed by the appellant/original defendant.

6. In view of the aforesaid state of affairs and more particularly as per the statement made by Mr. Surani, learned advocate for the respondent that the parties have settled the matter outside the court and Mr. Shah, learned advocate for the appellant has also endorsed to the statement made by Mr. Surani about the amicable settlement between the parties, Regular Civil Suit No. 174 of 1980 is permitted to be withdrawn. Resultantly, the decree recorded by the trial court in Regular Civil Suit No. 174 of 1980 which is confirmed by the lower appellate court is set aside. The appellant is also permitted to withdraw this Second Appeal since the matter has been settled between the parties outside the court, as recorded hereinabove. Resultantly, this Second Appeal stands disposed of as it is withdrawn. No order

as to costs.

4.8.2000. (A.M. Kapadia, J.)
